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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,082	01/13/2004	Brian J. Brozell	18074 USA	3103
27081	7590	06/29/2005	EXAMINER	
OWENS-ILLINOIS, INC. ONE SEAGATE, 25-LDP TOLEDO, OH 43666			HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/756,082

Applicant(s)

BROZELL ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-13-04 & 6-9-05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Wherein the lowermost bead is of less diameter than the bead closest to the base, it is unclear if the internal bead of the inner shell is disengaged from the two beads in order for the lugs to engage. See the last paragraph of claim 1 wherein the internal bead is set forth as being between the bead of lesser diameter and the base wall.

It is unclear how the resilient material of the beads are sufficient to impart rotation between the inner and outer shell.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minette (US 5,147,052) in view of Buono (US 5,597,934).

Minette teaches the claimed closure except for internal beads on the outer shell to impart rotation of the inner shell in a non child-resistant mode and one of the beads being of a smaller diameter than the other.

Buono teaches it is known to provide a child-resistant closure with two internal beads on the outer shell for engaging an internal bead on the inner shell in a non-child resistant mode.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a pair of spaced apart internal beads on the outer shell of the closure of Minette. Doing so gives the end user the option of making the closure non-child resistant and eliminates the need for a tool to assist with opening the associated closed container.

To make one bead of a smaller diameter than the other would have been an obvious matter design choice expedient for the making and functionality of the closure.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of King 9US 5,588,545).

Minette as modified teaches the claimed closure except for a segmented internal bead and the external bead having legs for extending into the gap in the non-child resistant mode.

King teaches it is known to provide an outer closure shell with a segmented bead and an inner closure shell with legs for engaging the gaps of the segmented bead.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a segmented bead and corresponding legs to the closure of Minette. Doing so is an alternative engaging arrangement between two components known in the closure art.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Stallions (US 6,206,216).

Minette teaches the claimed closure except for the lugs on the inner shell being C-shaped.

Stallions teaches it is known to provide a closure with C-shaped lugs on the inner shell base wall.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the C-shaped lugs for the lugs of Minette since the examiner takes Official Notice of the equivalence of non-C-shaped lugs and C-shaped lugs for their use in the closure art as evidenced by Stalions and the selection of any of these known equivalents to provide relative rotation between an inner and outer closure shell would be within the level of ordinary skill in the art.

6. Claims 1-3, 6.7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krautkrämer (US 5,445,283) in view of Buono.

Krautkrämer teaches the claimed closure except for internal beads on the outer shell to impart rotation of the inner shell in a non child-resistant mode and one of the beads being of a smaller diameter than the other.

Buono teaches it is known to provide a child-resistant closure with two internal beads on the outer shell for engaging an internal bead on the inner shell in a non-child resistant mode.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a pair of spaced apart internal beads on the outer shell of the closure of Krautkrämer. Doing so gives the end user the option of making the closure non-child resistant and eliminates the need for a tool to assist with opening the associated closed container.

To make one bead of a smaller diameter than the other would have been an obvious matter design choice expedient for the making and functionality of the closure.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 6 above, and further in view of King.

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Krautkrämer as modified teaches the claimed closure except for a segmented internal bead and the external bead having legs for extending into the gas in the non-child resistant mode.

King teaches it is known to provide an outer closure shell with a segmented bead and an inner closure shell with legs for engaging the gaps of the segmented bead.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a segmented bead and corresponding legs to the closure of Krautkrämer. Doing so is an alternative engaging arrangement between two components known in the closure art.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 6 above, and further in view of Stallions.

Krautkrämer teaches the claimed closure except for the lugs on the inner shell being C-shaped.

Stallions teaches it is known to provide a closure with C-shaped lugs on the inner shell base wall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the C-shaped lugs for the lugs of Krautkrämer since the examiner takes Official Notice of the equivalence of non-C-shaped lugs and C-shaped lugs for their use in the closure art as evidenced by Stallions and the selection of any of these known equivalents to provide relative rotation between an inner and outer closure shell would be within the level of ordinary skill in the art.

Election/Restrictions

9. This application contains claims directed to the following patentably distinct species of the claimed invention:

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Group I illustrating a closure in figures 1-15,
Group II illustrating a closure in figures 16 and 17,
Group III illustrating a closure in figures 18 and 19,
Group IV illustrating a closure in figure 20,
Group III illustrating a closure in figures 18 and 19,
Group V illustrating a closure in figures 21 and 22,
Group VI illustrating a closure in figures 23 and 24,
Group VII illustrating a closure in figure 25, and
Group VII illustrating a closure in figure 26.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if

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the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

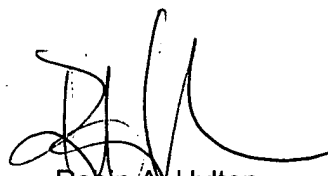
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supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
June 25, 2005



Robin A. Hylton
Primary Examiner
GAU 3727